IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 998 of 2003
In
SPECIAL CIVIL APPLICATION No. 1193 of 2002

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMRUTLAL AMBALAL MISTRY - Petitioner(s)

Versus

ADMINISTRATOR, JAIN DERASAR - Respondent(s)

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Appearance :

MR DJ BHATT for Petitioner No(s).: 1.

MR DIPAK R DAVE for Respondent No(s).: 1.

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CORAM :HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 06/07/2005

ORAL JUDGMENT (**Per : HONOURABLE MR.JUSTICE R.S.GARG)**

1. Heard learned counsel for the parties. Learned counsel for the appellant submits that the workman had also filed a writ application challenging a part of the award, but unfortunately that writ application could not be listed before the Court as it was kept under objections. His submission is that

unfortunately, because of the office of the union was set afire in riots, therefore, Vakalatnama of the workman could not be filed in the matter before the learned Single Judge. The submission is that proper opportunity if was given to the appellant, he could have satisfied the learned Single Judge that the present was not a matter where award could be set aside and that the matter could be remanded back by the learned Single Judge to the Labour Court with liberty in favour of the writ petitioner to lead further evidence. The submission is that in any case Special Civil Application No.1193 of 2002 deserves to be re-heard along with the workman's Special Civil Application No.3634 of 2002 by the learned Single Judge. It is to be noted that Special Civil Application No.3634 of 2002 has been listed before this Court.

2. Mr.Dave, learned counsel for the respondent however, submitted that if the appellant did not appear before the learned Single Judge right in time to raise all his objections and does not make out sufficient cause of his absence he cannot now be allowed to raise such pleading. His further submission is that the learned Single Judge was absolutely justified in permitting the present respondent to raise a new plea relating to the very jurisdiction of the Court that whether a Jain temple is an industry or not.

3. After hearing both the sides and taking into consideration the cause shown by the appellant for which he could not appear in Special Civil Application No.1193 of 2002 and further that the workman himself is partly aggrieved by the award has filed Special Civil Application No.3634 of 2002 and that a legal question has been raised by him that whether the learned Single Judge could allow the respondent to raise any plea, we are of the opinion that the matter should be remanded to the learned Single Judge for giving proper opportunity of hearing to both the sides for disposal of both the Special Civil Applications simultaneously.

4. The judgement by the learned Single Judge is hereby set aside. We, however, make it clear that we are not entering into the merits of the matter, but are setting aside the judgement on technical grounds. Both the matters shall be

listed before the learned Single Judge for simultaneous hearing. The parties would be entitled to raise all legal and factual pleas available to them. Office is hereby directed to list the matters before the learned Single Judge in accordance with the procedure. The Appeal stands disposed of. We make it clear that we are not passing any orders in Special Civil Application NO.3634 of 2002.

5. Civil Application NO.5705 of 2002 is disposed of in view of the final judgement.

(R.S. Garg, J.)

(Ravi R. Tripathi, J.)

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